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12
13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15 -----
16 SUSAN MARIE PASHKOVSKY,

17 Plaintiff,

18 v.

19
20 ST. JOSEPH HEALTH, ST. MARY
21 MEDICAL CENTER; PROVIDENCE ST.
22 JOSEPH HEALTH; PROVIDENCE
HEALTH AND SERVICES,

23 Defendants.
24
25 -----

Civil Action No: 5:18-cv-2147

COMPLAINT

DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

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2
3 1. Plaintiff SUSAN MARIE PASHKOVSKY is profoundly deaf is profoundly
4 deaf and communicates primarily in American Sign Language (“ASL”), which is her
5 expressed, preferred, and most effective means of communication. Her deafness impacted
6 her ability to learn and acquire language from an early age, and as a result, she has difficulty
7 communicating in English.¹ Plaintiff is likewise unable to effectively communicate by
8 reading lips.² Defendants are a catholic hospital and a not-for-profit healthcare system.
9
10

11 2. Defendants both hindered and prevented Plaintiff from benefitting from their
12 services, and discriminated against Plaintiff unlawfully, on the basis of Plaintiff’s disability
13 of deafness by refusing to provide the ASL interpreters that Plaintiff required to understand
14 and participate in her medical care during a procedure that Plaintiff underwent in
15 Defendants’ facilities in 2016 and a subsequent hospitalization. This denial was in spite of
16
17

18
19 ¹ Due to physical, environmental, and pedagogical factors, many deaf individuals have
20 difficulty acquiring spoken languages such as English. Indeed, the median reading level
21 of deaf high school graduates is fourth grade. This is because many deaf people acquire
22 English as their second language (after ASL or another form of sign language) well past
the critical developmental period of language acquisition.

23 ² Lip-reading, or the ability to understand the speech of another by watching the
24 speaker’s lips, is an extremely speculative means of communication and is no substitute
25 for direct communication through a qualified sign language interpreter. Only a small
26 number of spoken sounds in aural language are visible, and many of those words appear
27 identical on the lips. Even if a primary ASL user were able to determine the sounds
28 appearing on a speaker’s lips, he or she would still not necessarily understand the English
language as English and ASL are distinct languages with disparate grammatical
structures.

1 Plaintiff's repeated requests for an interpreter.

2 3. Based on Plaintiff's allegations herein, it is evident that Defendants have
3 failed to implement policies, procedures, and practices respecting the civil rights and
4 communication needs of deaf individuals. Plaintiff brings this lawsuit to compel
5 Defendants to cease unlawful discriminatory practices and implement policies and
6 procedures that will ensure effective communication, full and equal enjoyment, and a
7 meaningful opportunity for deaf individuals to participate in and benefit from Defendants'
8 health care services.
9

10
11
12 4. Plaintiff brings this action seeking declaratory, injunctive, and equitable
13 relief; compensatory damages; and attorneys' fees and costs to redress Defendants'
14 unlawful discrimination against Plaintiff on the basis of her disability in violation of
15 Section 1557 of the Patient Protection and Affordable Care Act ("ACA"), 42 U.S.C. §
16 18116.
17
18

19 **THE PARTIES**

20 5. Plaintiff SUSAN MARIE PASHKOVSKY brings this action as an individual
21 residing in Victorville, California. Plaintiff is a profoundly deaf individual who has limited
22 English proficiency and who primarily communicates in American Sign Language.
23 Plaintiff is substantially limited in the major life activities of hearing and speaking and is
24 an individual with a disability within the meaning of federal and state civil rights laws.
25
26

27 6. Defendant ST. JOSEPH HEALTH, St. MARY MEDICAL CENTER is a
28

1 hospital located at 18300 US Hwy 18, Apple Valley, California 92307-2255. Defendants
2 PROVIDENCE ST. JOSEPH HEALTH and PROVIDENCE HEALTH AND SERVICES
3
4 are a national, Catholic, not-for-profit health system that serve as the parent corporation of
5 St. Joseph Health, St. Mary Medical Center and have their principle places of business at
6 1801 Lind Ave SW Renton, Washington 98057. Upon information and belief, Defendants
7
8 are recipients of federal financial assistance, including Medicare and/or Medicaid
9 reimbursements.

10 **JURISDICTION & VENUE**

11
12 7. This Court has jurisdiction over the subject matter of this action pursuant to
13 28 U.S.C. §§ 1331 and 1343 for Plaintiff's claims arising under the laws of the United
14 States.

15
16 8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the
17 Defendants are residents of this District, and/or Defendants have sufficient contacts with
18 this District to subject them to personal jurisdiction at the time this action is commenced,
19 and/or a substantial part of the events that give rise to the claims occurred in this District.

20 **STATEMENT OF FACTS**

21
22
23 9. Ms. Pashkovsky is a profoundly deaf individual who communicates primarily
24 through American Sign Language.

25
26 10. Plaintiff has limited proficiency in English, cannot effectively communicate
27 by reading lips, and requires auxiliary aids and services to communicate effectively in a
28

1 medical setting.

2 11. Ms. Pashkovsky suffers from serious back problems, having sustained a work-
3 related injury to her lower back and left hip in 2013.
4

5 12. Ms. Pashkovsky underwent a left lumbar decompression surgery on
6 November 17, 2014, to relieve symptoms caused by pressure on her spinal cord and nerve
7 roots.
8

9 13. On or about February 11, 2016, Ms. Pashkovsky was scheduled to undergo a
10 second back surgery at Defendants' facility St. Mary Medical Center in Apple Valley,
11 California.
12

13 14. Prior to this surgery, Ms. Pashkovsky had arranged to have an ASL interpreter
14 present between 8:00 am and 9:00 am, allowing for a pre-surgery consultation with the
15 surgeon performing her back surgery.
16

17 15. Plaintiff made requests for interpreters to Defendants' Language Access
18 Coordinator Maria.
19

20 16. However, Defendants failed to provide Plaintiff's prearranged interpretive
21 services on the day of her surgery.
22

23 17. No interpreter was present prior to Plaintiff's surgery, and the treating surgeon
24 was unwilling to wait for an interpreter to arrive.
25

26 18. Therefore, Ms. Pashkovsky was taken into surgery without any pre-operative
27 consultation.
28

1 19. Following her surgery, Ms. Pashkovsky was told that an interpreter had
2 arrived around 12:30 pm.
3

4 20. Upon information and belief, Defendants' staff told the interpreter that they
5 were refusing to pay for interpretative services for Plaintiff. Therefore, the interpreter left
6 the hospital within five minutes and Plaintiff was unable to communicate with medical
7 staff after her procedure.
8

9 21. As a result of Defendants' failure to provide an interpreter before and after
10 her procedure, Ms. Pashkovsky was unable to communicate with the treating physicians,
11 surgeons, and nurses; she was unable to understand any instructions before entering into
12 surgery; and she had no understanding of the results of the procedure or the medications
13 proscribed to her after the fact.
14
15

16 22. While still groggy from her procedure, Plaintiff asked a member of
17 Defendants' staff for an interpreter. None was provided.
18

19 23. Instead, Defendants' forced Plaintiff to attempt to communicate by typing
20 messages on a small screen. However, it was highly difficult for Plaintiff to use the device
21 because she was in pain.
22

23 24. Plaintiff wrote requests for an interpreter on the screen. She then wrote the
24 message "where's interpreter?" on the screen and showed it to a number of nurses and
25 doctors. No interpreter was provided.
26

27 25. Shortly thereafter, the battery died on the small device that Defendants had
28

1 given to Plaintiff to use to type messages. Defendants' failed to give Plaintiff any
2 alternative aids or services and still refused to provide an interpreter.
3

4 26. From February 11 to February 18, 2016 Plaintiff remained hospitalized.
5 During this time, she made numerous requests for an interpreter. No interpreter was ever
6 provided.
7

8 27. Plaintiff tried to understand what Defendants' staff said to her by reading lips.
9 However, Plaintiff cannot communicate by reading lips and she was particularly unable to
10 read the lips of staff because she was in pain and because Plaintiff's doctor had a strong
11 accent.
12

13 28. On one occasion, Plaintiff experienced severe pain as a result of an issue with
14 her catheter. However, she was unable to communicate the issue to her nurses and was
15 forced to sit in excruciating pain until someone realized what was going on.
16
17

18 29. On one occasion, Plaintiff's son visited her for several hours. During his visit,
19 medical staff forced him to serve as an interpreter for Plaintiff in spite of the fact that
20 Plaintiff's son is a novice signer.
21

22 30. In most instances, effective communication could not have taken place
23 between Plaintiff and Defendants' staff without the aid of a qualified ASL interpreter.
24

25 31. Indeed, as a result of Defendants' failure to provide effective auxiliary aids
26 and services, Plaintiff did not understand the outcome of her procedure; the purposes of
27 the treatments being provided; the common risks and/or benefits of those treatments; the
28

1 common risks, side effects, and benefits of medications given; the specific dosage
2 instructions for medications given; the existence of any alternative treatments; the
3 approximate length of care; the potential side effects of stopping treatment; the details of
4 any aftercare or discharge instructions; etc.
5

6 32. No interpreter was provided to Plaintiff during discharge.
7

8 33. As a result, Plaintiff was unaware that she was supposed to undergo physical
9 therapy. On one occasion shortly after her discharge from the hospital, a therapist arrived
10 at Plaintiff's house to administer physical therapy. She had no idea who the therapist was
11 or why they had come to her house.
12

13 34. Similarly, because of the lack of effective communication between Plaintiff
14 and her doctors, Plaintiff was unaware that a portion of a bone in her back had been
15 removed until she discovered that information in her medical records after she returned
16 home.
17

18 35. Defendants' discrimination against Plaintiff, and Plaintiff's resulting lack of
19 understanding of her medical care, caused Plaintiff to suffer humiliation, anger, frustration,
20 stress, anxiety, and emotional distress.
21

22 36. Defendants and Defendants' staff knew that Plaintiff is deaf and were aware
23 that Plaintiff made repeated requests for interpreters.
24

25 37. Defendants also knew or should have known of their obligation as a health
26 care provider under the ADA, the RA, and their equivalents to develop policies to promote
27
28

1 compliance with these statutes and to provide reasonable accommodations, including but
2 not limited to the provision of ASL interpreters to ensure effective communication with
3 deaf persons.
4

5 38. Defendants and their staff knew or should have known that their actions and/or
6 inactions created an unreasonable risk of causing Plaintiff greater levels of fear, anxiety,
7 indignity, humiliation, and/or emotional distress than a hearing person would be expected
8 to experience.
9

10 39. Nonetheless, Defendants prevented Plaintiff from benefitting from its services
11 by failing to provide the ASL interpreters necessary for her participation and care.
12

13 40. In doing so, Defendants intentionally discriminated against Plaintiff and acted
14 with deliberate indifference to her federally protected rights.
15

16 41. Defendants' wrongful and intentional discrimination against Plaintiff on the
17 basis of her disability is reflected by Defendants' failure to train employees and promulgate
18 policies of non-discrimination against deaf individuals.
19

20 42. As a result of Defendants' failure to ensure effective communication with
21 Plaintiff, Plaintiff received services that were objectively substandard and that were
22 inferior to those provided to patients who are hearing.
23

24 43. Plaintiff is entitled to equal access to services offered by Defendants as are
25 enjoyed by non-disabled persons.
26

27 44. Plaintiff still wishes to access Defendants' services and receive care in
28

1 Defendants' facilities, but is being prevented from doing so by Defendants' discrimination
2 against her on the basis of her disability.
3

4 **CLAIM I: VIOLATIONS OF THE PATIENT PROTECTION AND**
5 **AFFORDABLE CARE ACT**

6 45. Plaintiff repeats and realleges all preceding paragraphs in support of this
7 claim.
8

9 46. At all times relevant to this action, Section 1557 of the Patient Protection and
10 Affordable Care Act has been in full force and effect and has applied to the Defendants'
11 conduct.
12

13 47. At all times relevant to this action, Plaintiff has had substantial limitations to
14 the major life activities of hearing and speaking and has been an individual with a disability
15 within the meaning of Section 1557 of the Patient Protection and Affordable Care Act, 42
16 U.S.C. § 18116.
17

18 48. At all times relevant to this action, Plaintiff's primary language for
19 communication has been American Sign Language (and not English), and Plaintiff has had
20 limited ability to read, write, speak, or understand English. Plaintiff has therefore been an
21 individual with limited English proficiency within the meaning of Section 1557 of the
22 Patient Protection and Affordable Care Act, 45 C.F.R. § 92.4.
23

24 49. At all times relevant to this action, Defendants received federal financial
25 assistance, including Medicare and/or Medicaid reimbursements, and have been
26
27
28

1 principally engaged in the business of providing health care. Therefore, Defendants are a
2 health program or activity receiving federal financial assistance pursuant to 42 U.S.C. §
3 18116(a).
4

5 50. Pursuant to Section 1557 of the Patient Protection and Affordable Care Act,
6 “an individual shall not, on the ground prohibited under . . . section 504 of the
7 Rehabilitation Act of 1973 (29 U.S.C. § 794), be excluded from participation in, be denied
8 the benefits of, or be subjected to discrimination under, any health program or activity, any
9 part of which is receiving Federal financial assistance.” 42 U.S.C. § 18116.
10
11

12 51. Federal regulations implementing Section 1557 of the Patient Protection and
13 Affordable Care Act provide that “[a] covered entity shall take reasonable steps to provide
14 meaningful access to each individual with limited English proficiency eligible to be served
15 or likely to be encountered in its health programs and activities.” 45 C.F.R. § 92.201.
16
17

18 52. Federal regulations implementing Section 1557 of the Patient Protection and
19 Affordable Care Act provide that “(1) A covered entity shall offer a qualified interpreter to
20 an individual with limited English proficiency when oral interpretation is a reasonable step
21 to provide meaningful access for that individual with limited English proficiency; and (2)
22 A covered entity shall use a qualified translator when translating written content in paper
23 or electronic form.” 45 C.F.R. § 92.201(d).
24
25

26 53. Federal regulations implementing Section 1557 of the Patient Protection and
27 Affordable Care Act provide that “[a] covered entity that provides a qualified interpreter
28

1 for an individual with limited English proficiency through video remote interpreting
2 services in the covered entity's health programs and activities shall provide: (1) Real-time,
3 full-motion video and audio over a dedicated high-speed, wide-bandwidth video
4 connection or wireless connection that delivers high-quality video images that do not
5 produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2)
6 A sharply delineated image that is large enough to display the interpreter's face and the
7 participating individual's face regardless of the individual's body position; (3) A clear,
8 audible transmission of voices; and (4) Adequate training to users of the technology and
9 other involved individuals so that they may quickly and efficiently set up and operate the
10 video remote interpreting.” 45 C.F.R. § 92.201(f).

11
12 54. Federal regulations implementing Section 1557 of the Patient Protection and
13 Affordable Care Act provide that “[a] covered entity shall take appropriate steps to ensure
14 that communications with individuals with disabilities are as effective as communications
15 with others in health programs and activities.” 45 C.F.R. § 92.202(a).

16
17 55. Federal regulations implementing Section 1557 of the Patient Protection and
18 Affordable Care Act provide that “(1) A [covered] entity shall furnish appropriate auxiliary
19 aids and services where necessary to afford individuals with disabilities, including
20 applicants, participants, companions, and members of the public, an equal opportunity to
21 participate in, and enjoy the benefits of, a service, program, or activity of a [covered]
22 entity. . . . In determining what types of auxiliary aids and services are necessary, a public
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1 entity shall give primary consideration to the requests of individuals with disabilities. In
 2 order to be effective, auxiliary aids and services must be provided in accessible formats, in
 3 a timely manner, and in such a way as to protect the privacy and independence of the
 4 individual with a disability.” 45 C.F.R. § 92.202(a); 28 C.F.R. § 35.160(b).

5
 6 56. As set forth above, Defendants discriminated against Plaintiff, on the basis of
 7 disability, in violation of the Patient Protection and Affordable Care Act and its
 8 implementing regulations.
 9

10
 11 57. The Patient Protection and Affordable Care Act, by incorporating the
 12 enforcement mechanism of the Rehabilitation Act, extends a cause of action to “any person
 13 aggrieved” by discrimination in violation thereof. 42 U.S.C. § 18116(a).
 14

15 58. Defendants have failed to implement policies, procedures, and training of staff
 16 necessary to ensure compliance with the Patient Protection and Affordable Care Act.
 17

18 59. Plaintiff is therefore entitled to injunctive relief; attorneys’ fees, costs, and
 19 disbursements; and compensatory damages for the injuries and loss they sustained as a
 20 result of Defendants’ discriminatory conduct and deliberate indifference as hereinbefore
 21 alleged, pursuant to 42 U.S.C. § 18116(a).
 22

23 **PRAYER FOR RELIEF**

24
 25 **WHEREFORE**, Plaintiff respectfully prays that this Court grant the following relief:

26 a. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of
 27 Civil Procedure, stating that Defendants’ policies, procedures, and practices have subjected
 28

1 Plaintiff to unlawful discrimination in violation of Section 1557 of the Patient Protection
2 and Affordable Care Act.

3
4 b. Issue an injunction forbidding Defendants from implementing or enforcing
5 any policy, procedure, or practice that denies deaf or hard of hearing individuals, or their
6 companions, meaningful access to and full and equal enjoyment of Defendants' facilities,
7 services, or programs;
8

9
10 c. Issue an injunction ordering Defendants:
11

12 i. to develop, implement, promulgate, and comply with a policy requiring that
13 when a deaf or hard of hearing individual requests an in-person interpreter
14 for effective communication, one will be provided as soon as practicable in
15 all services offered by Defendants;
16

17
18 ii. to develop, implement, promulgate, and comply with a policy to ensure that
19 Defendants will notify individuals who are deaf or hard of hearing of their
20 right to effective communication. This notification will include posting
21 explicit and clearly marked and worded notices that Defendants will
22 provide sign language interpreters, videophones, and other communication
23 services to ensure effective communication with deaf or hard of hearing
24 persons;
25

26
27
28 iii. to develop, implement, promulgate, and comply with a policy to ensure that

1 deaf or hard of hearing individuals are able to communicate through the
2 most appropriate method under the circumstances, recognizing that the VRI
3 is not appropriate in all medical situations;
4

5
6 iv. to develop, implement, promulgate, and comply with a policy to ensure, in
7 the event the Defendants utilize a Video Remote Interpreting System
8 (“VRI”), that such system has a high-speed Internet connection; a video
9 screen with appropriate size, position, capture angle, focus, and proximity
10 to the deaf individual; and appropriate audio quality. When possible, the
11 equipment should be portable and made available to the patient where the
12 patient is located, preferably in a private room to minimize distractions and
13 maintain confidentiality;
14

15
16
17 v. to train all their employees, staffs, and other agents on a regular basis about
18 how to properly use VRI services (including how to set up the VRI system
19 and how to obtain technical assistance in case of system malfunction or
20 failure) and how to obtain interpreters when reasonably requested by deaf
21 or hard of hearing individuals;
22

23
24
25 vi. to create and maintain a list of sign language interpreters and ensure
26 availability of such interpreters at any time of day or night;
27

28 vii. to train all employees, staff, and other agents on a regular basis about the

rights of individuals who are deaf or hard of hearing under the ACA.

d. Award to Plaintiff:

- i. Compensatory damages pursuant to the ACA.
- ii. Reasonable costs and attorneys' fees pursuant to the ACA.
- iii. Interest on all amounts at the highest rates and from the earliest dates allowed by law;
- iv. Any and all other relief that this Court finds necessary and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury for all of the issues a jury properly may decide, and for all of the requested relief that a jury may award.

Dated: October 8, 2018

Respectfully submitted,

By:



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